

# Circular 230 The Basics Thomas Barry Cooke

Ethics: Our Joint Responsibility

**NSTP**  
**2005**

# The 24 Slides Rule

And the Way Around the Rule

# Slides are Available

- You can obtain a copy of this presentation by visiting

[www.NSTP.org](http://www.NSTP.org)

# What is Circular 230?

- Regulates the behavior of attorneys, CPAs, enrolled agents, and others practicing before the IRS.
  - Who has the right to practice before the IRS or the Treasury
  - The obligations and limitations regarding this practice, and
  - Consequences of violating these regulations.

*To ensure integrity in the tax system, tax practitioners must adhere to ethical practices when advising clients or preparing documents for the Internal Revenue Service.*



# To retain integrity tax practitioners must:

- Maintain clear communication with clients and offer proper advice.
- Establish and communicate relevant facts.
- Apply the facts according to the law.
- Come to conclusions in accordance with facts and the law.
- Advise the client in accordance with the conclusions reached.
- Act fairly and in accordance with the law when practicing before the IRS.

- Who governs practice?

- Director of Practice
  - appointed by Secretary of Treasury, dictates who may practice before IRS and sets disciplinary proceedings

- What is considered practice?

- all matters connected with presenting information to the IRS

- Who may practice?

- Attorneys
- CPAs
- Enrolled agents
- Enrolled actuaries on limited basis
- Others

# “Limited” Practice

## Section 10.7(c)

- Representing a *family member*
- *Employee* representing an employer
- *General Partner* representing the partnership
- *Officer or full-time employee* representing a corporation
- An individual who prepares and signs a taxpayer's return as the *preparer*\*



# “Limited” Practice

“Any individual who prepares and signs a taxpayer’s return as the preparer, or who prepares a return but is not required to sign the return, may represent the taxpayer before officers and employees of the **Examination Division** of the IRS with respect to the **tax liability** of the taxpayer for the **taxable year** or **period** covered by **that return**.”

# Who Can Prepare Tax Returns?

- Section 10.7(e)

“Any individual may **prepare** a tax return, **appear** as a **witness** for the taxpayer before the IRS, or **furnish** information at the request of the IRS ...”

# Eligibility for Enrollment

- Enrollment attained from examination or if former IRS employee
- To request enrollment
  - Form 23
  - Fee
  - Additional information or examination



# Senate Bill S. 832 Update

- Introduced in the Senate on
- Referred to the Senate Finance Committee
- Visit [www.NSTP.org](http://www.NSTP.org) to see:
  - The proposed legislation
  - Comments on Senator Jeff Bingaman
  - NSTP's position paper on S. 832

# S. 832

## Scope and Content

- Competency Examination
- Knowledge of Ethical Standards
- Renewal of Eligibility Every 3 Years
- Continuing Education Requirements
- Sanctions for Noncompliance
- Enhanced Code Penalties
- Public Awareness Campaign

# The Challenge: RUDA

- **Recognize** in advance potential ethical issues
- **Understand** what the tax authorities require
- **Design** a framework for analysis
- **Achieve** a level of comfort

# Information to be Furnished

## Section 10.20

"A practitioner must, on a proper and lawful request ... promptly submit records or information in any matter before the IRS **UNLESS** the practitioner believes in **GOOD FAITH** and on **REASONABLE GROUNDS** that the records or information is **PRIVILEGED.**"

# The “Privilege”

- The IRS Restructuring and Reform Act of 1998 created a “limited” accountant-tax client privilege but only in **non-criminal** proceedings.

26 U.S.C. 7525

- The “limited” privilege applies to communications made to federally authorized tax practitioners.

26 U.S.C. 7525 (a)



# Where are the Records?

- Section 10.20(a) requires the practitioner to provide information that the practitioner has regarding the identity of any person who the practitioner believes may have possession or control of the requested records or information.

# Side Bar Comment

- The practitioner is NOT required to make inquiry of any other person or independently verify any information provided by the practitioner's client regarding the identity of such person.

# Knowledge of a Client's Omission

## Section 10.21

- Where a practitioner **KNOWS** that a client has not complied with the revenue laws of the U.S. or has made an error in or omission from any return, document, affidavit, or other paper which the client has submitted or executed ... the practitioner **MUST ADVISE** the client **PROMPTLY** of the fact or such noncompliance, error or omission.

# Side Bar Comment

- While Section 10.21 does not address the issue, it probably makes sense to notify (advise) the client in WRITING.
- Note that Section 10.21 does state that: "the practitioner must advise the client of the consequences provided under the Code and regulations of such noncompliance, error, or omission."

# Due Diligence

## Section 10.22(a)

- Exercise **due diligence** in:
  - The work we do
  - Statements we make to the IRS
  - Statements we make to clients

Side Bar Comment: Reliance on Others  
Section 10.22(b)

# Reliance on Others

## Presumption of Due Diligence

- When a practitioner relies on the work product of another person and used reasonable care in engaging, supervising, training, and evaluating the person ... there is a PRESUMPTION that the practitioner exercised DUE DILIGENCE.

Section 10.22(b)

# Prompt Disposition

- A practitioner may NOT unreasonably delay the prompt disposition of any matter before the IRS.

Section 10.23

# FEEES

## Section 10.27(a) & 10.27(b)(2),(3)

- A practitioner may not charge an **unconscionable fee** for representing a client in a matter before the IRS. Section 10.27(a)
- **Contingent fees** Section 10.27(b)(2),(3)



# Contingent Fees NOT Allowed

- A practitioner may NOT charge a contingent fee for preparing an **original tax return** or for any advice rendered in connection with a position taken or to be taken on an **original tax return**.

Section 10.27(b)(2)

# Contingent Fees Allowed

- A contingent fee may be charged for preparation of or advice in connection with an amended return or a claim for refund (other than a claim for refund made on an original tax return), but **only** if the practitioner reasonably anticipates at the time the fee arrangement is entered into that the amended tax return or refund claim **will receive substantive review** by the IRS.

# Return the Client's Record

## Section 10.28(a)

- A practitioner must, at the request of a client, promptly return any and all records of the client that are necessary for the client to comply with his/her tax obligations. Section 10.28(a)
- What if there is a fee dispute?

# Conflicting Interests

## Section 10.29(a) and 10.29(b)

- Practitioner shall not represent a client if there is a conflict of interest
- Conflict of interest occurs when:
  - Representing one client will adversely affect another client
  - Risk that representation will be limited due to the practitioner's responsibilities to other clients

(Under some circumstances, the practitioner may still represent the client)

# Advertising Restrictions

- Practitioner's advertisements may not contain **false, fraudulent** or **coercive** statements
- Enrolled agents may not use the word "certified" to describe their relationship with the IRS. Section 10.30(a)
- Communication of fee information must not be deceptive

# Preparing Tax Returns

## Standards Section 10.34

- Realistic Possibility Standard – Practitioner may not sign tax return unless it has a realistic possibility of being sustained on its merits
- Practitioner must advise clients on potential penalties and methods to avoid these penalties (i.e. disclosure)
- Practitioner may rely on information provided by clients as long as he has no reason to believe that the information is incorrect

# Violation of Regulations

- The Secretary of the Treasury may censure (publicly reprimand), suspend or disbar any practitioner who violates these rules or misleads a client

# Complaint against Practitioner

- Complaint names respondent and provides a clear description of charges
- Complaint must specify the sanction sought against the practitioner
- Director of Practice demands an answer from the respondent within a specified time period
- Administrative Law Judge makes a decision including statement of findings and conclusions and an order or censure, suspension, disbarment or dismissal of the complaint



# General Provisions

- Records – Director of Practice must make the roster of all people eligible to practice available to the public
- These rules are applicable as of July 26, 2002
- Secretary of Treasury reserves the right to issue special orders as he deems right

# 2004 Amendments

## Goals

- To get practitioners to utilize the **best practices**
- Stricter requirements for tax shelter opinions
  - Tax shelter opinion – advice from a practitioner that aims at avoiding taxes

# Best Practices

- Tax advisors should provide clients with the highest quality representation ... by adhering to best practices in providing advice and in preparing or assisting ...
  - Communicating clearly with client the intent of the engagement
  - Establish the relevant facts
  - Advise the client on the importance of conclusions
  - Acting with integrity and fairness with IRS

# Best Practices

## Effective June 20, 2005

“The tax system is best served when the public has confidence in the honesty and integrity of the professionals providing tax advice. To **restore, promote, and maintain** the public’s confidence in those individuals and firms ...”

# These Best Practices Are Aspirational

“Although best practices are solely aspirational, tax professionals are expected to observe these practices to preserve public confidence in the tax system.”

# Judge Learned Hand

Commissioner v. Newman

159 F.2<sup>nd</sup> 848, 850-851 (CA-2, 1947)

"Over and over again, courts have said there is nothing sinister in so arranging one's affairs as to keep taxes as low as possible. Everybody does so, rich or poor; and all do right, for nobody owes any public duty to pay more than the law demands; taxes are enforced extractions, not voluntary contributions. To demand more in the name of morals is mere cant."

# Thank You Tom Cooke

- Thank you for attending:  
Circular 230: The Basics
- Please consider attending the additional (2) Ethics seminars

